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June 10, 2025

Senate Rules Committee
Senator Kaysa Jama, Chair
Senator Daniel Bonham, Vice-Chair

Re: Testimony in Support of HB 3582 A (Eliminating Civil Statute of Limitations for Child Sex Abuse and Sexual Assault)

To the Honorable Chair Jama, Vice-Chair Bonham, and Members of the Senate Rules Committee:

My name is Amy Bruning. I am an attorney licensed in the State of Oregon whose practice is dedicated to representing injured Oregonians, including survivors of sexual abuse. I come before you today in strong support of HB 3582 A, which would eliminate the civil statute of limitations for survivors of child sex abuse and sexual assault and eliminate the word "knowingly" as to institutions that allow, permit, and encourage such abuse. This bill will allow survivors to seek full redress for their harm against their assailants and the institutions that enable them.

As our societal understanding of the impact of sexual abuse has grown over the last several decades, this legislature has taken steps on multiple occasions to recognize and remove some of the barriers survivors face within our civil justice system. It is time to do so again by passing HB 3582 A. As background, decades ago, our laws only allowed two years to bring a civil suit for damages arising out of sexual assault—the exact same time someone injured in a car wreck had to bring a claim. However, we now know that the injuries inflicted by sexual assault are much different and more complex and the law should treat them accordingly.

Most relevant to HB 3582 A is our knowledge that the trauma associated with sexual assault can lead to prolonged delay in disclosure due to fear, shame, guilt, self-blame, denial, or psychological distress. In fact, scientific research has uncovered that such trauma actually changes key processing centers of the brain, including Broca's area, which is linked directly to speech production and verbalization of experience. Survivors of sexual assault are quite literally silenced. This presents a significant barrier to seeking legal assistance. It can take many, many years—beyond what our current laws allow—for a survivor to process and recover from their abuse in order to feel prepared and ready to seek civil justice through our legal system.

In 1989, this legislature enacted ORS 12.117—its first step in recognizing that survivors of sex abuse must be treated differently. This statute, as enacted, expanded the statute of limitations for survivors of child sex abuse to five years after their 18th birthday. Two years later, this

legislature acted again, enlarging the time to six years and adding a discovery rule that differed from other types of torts.[1]

Multnomah County Circuit Court Judge John Wittmayer—who presided over a docket of dozens of child sex abuse and assault cases over more than a decade—explained that the Oregon legislature purposefully chose to treat sex abuse cases differently than other kinds of torts and gave them "special consideration" and "a completely different statute of limitations."[2] These types of claims have a distinct discovery rule because they are "unique in the view of the legislative assembly."[3]

In 1993 and again in 2009, this legislature acted to amend ORS 12.117 and extend the time survivors of child sex abuse had to bring claims in light of increasing evidence regarding the trauma and complex harm inflicted by such abuse. Ten years later, in 2019, this understanding was finally extended to adult survivors of sexual assault and ORS 12.118—a companion to ORS 12.117—was enacted. At the time, the legislature recognized that Oregon's short statute of limitations limited adult survivors' access to the civil courts and precluded them from holding those responsible, including those who are in a position to prevent future abuse and assaults.[4]

While this legislature has intended in each enactment and amendment to remove barriers for survivors, the reality is that the current statutes still do not allow survivors to pursue justice on their own timelines and may foreclose their claims altogether based on a judge's misinterpretation.

For instance, while the statutes' unique discovery rule was intended to give survivors more time, it imposes a one-size-fits-all standard that ignores the proven fact that emotional trauma following sexual assault simply does not present the same in all survivors. The effect is that the question before the court is not when a particular survivor *actually* discovered the connection between their abuse and their injury, but instead when a judge or jury believes they *should have* discovered such a connection.

Additionally, while the legislative histories of both ORS 12.117 and 12.118 demonstrate a very purposeful intent to include negligence claims against institutions that allow or permit sexual abuse, the reality is that the "knowingly" language has been exploited by institutional defendants in order to try to escape liability. While most trial judges have correctly construed the statutes to encompass negligence claims against those institutions who knew that sexual abuse occurred and

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[1] In analyzing ORS 12.117, the Court of Appeals in *Jasmin v. Ross* explicitly acknowledged that the "injury" in the context of a claim under this statute is "distinct in time and logic" from the abuse itself. 177 Or App 210, 216 n 3, 33 P3d 725 (2001). "A definition [of injury] equating the 'injury' with the abusive conduct itself makes the statute unintelligible: the statute treats the abuse and the injury as logically and temporarily distinct concepts, in that the abuse is said to cause the injury, and a thing cannot cause itself." *Id.*

[2] Hearing transcript of Defendant's Motion for Summary Judgment in *T.R. v. Boy Scouts of America*, Case No. 1205-06179 (Multnomah Cnty Cir Ct May 1, 2014).

[3] *Id.*

[4] Testimony, House Committee on Judiciary, HB 3293 B, Apr 1, 2019 (statement of Jacqueline Swanson), available at https://olis.oregonlegislature.gov/liz/2019R1/Downloads/CommitteeMeetingDocument/183969

failed to take steps to prevent it, there have been rare instances where courts have imposed a much higher standard.[5]

Unfortunately, I have seen this in my own pending case representing 160 women and girls who were sexually assaulted by their doctor at a clinic and hospitals over a period of three decades. In a motion to dismiss some of these survivors' claims, the hospital defendants argued that the "knowingly" language required that the survivors prove that these institutions who employed this doctor had "'actual knowledge' of abuse by [the doctor] as to the *particular plaintiff*, not simply * * * of other acts of abuse by [the doctor] against different patients."[6] The judge agreed and adopted the defendants' narrow and harmful interpretation.

The result of such a decision is that an institution is afforded many ways that it can escape liability for allowing or permitting abuse under ORS 12.117 or 12.118. As an example, if a hospital knew a doctor sexually abused Patient A and did nothing, its negligence would not fall under these statutes if the doctor went on to abuse Patient B, Patient C, and Patient D. Or, in another example, if a hospital knew that a doctor sexually abused a patient, but took no steps to discover and gain "actual knowledge" of that patient's identity, its negligence again would fall outside these statutes if the doctor continued to abuse that patient. And further, in yet another seemingly unbelievable example, if a hospital chose to be ignorant of its doctors' sexual abuse of patients, such action or inaction would be rewarded by not falling within this narrow interpretation of ORS 12.117 and 12.118. This was never the intent of our legislature in decades of amendments to expand the availability of civil redress for sexual assault.

While most trial courts have correctly adopted broader interpretations, the confusion regarding "knowingly" has nonetheless resulted in extensive motion practice and confusion for litigants. Removal of this one word—while still requiring that the survivor demonstrate that the institution "allowed, permitted, or encouraged" child sex abuse or sexual assault—would remedy this clear injustice for Oregonians who will bring such claims in the future and for those navigating our court system now.

Opponents of HB 3582 A have argued that it would "revive" claims and give institutions "no choice but to settle regardless of whether they could have done anything to prevent the abuse." This is a baseless assertion that demonstrates a incorrect reading of the bill itself or how these claims are frequently defended in the civil justice system.

If passed, the extended statute of limitations will only apply to claims that arise on or after the date the bill passes,[7] and the removal of knowingly will only apply to claims that are timely filed within the then-current statute of limitations and where no final judgment has been entered.

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[5] *See, e.g., Sapp v. Roman Catholic Archbishop of Portland in Or.*, No. CV 08-68-PK, 2008 US Dist LEXIS 33263 at *36-38 (D Or Apr 22, 2008) (Papak, M.J.)

[6] Order on Defendant Providence Health & Services Oregon's Rule 21 Motions, *Coe v. Farley*, Case No. 20CV37412, at p. 7 (Multnomah Cnty Cir Ct Dec 5, 2022); *see also* Order on Defendant Legacy Meridian Park Hospital's Rule 21 Motions*, Coe v. Farley*, Case No. 20CV37412, at p. 7 (Multnomah Cnty Cir Ct Apr 6, 2024).

[7] "'Arise,' as lawyers understand, means to come into being so that a legal consequence * * * may commence. It is, in that sense, the equivalent of an equally familiar concept, 'accrue.'" *Howell v. Willamette Urology, P.C.*, 344 Or 124, 128, 178 P3d 220 (2008).

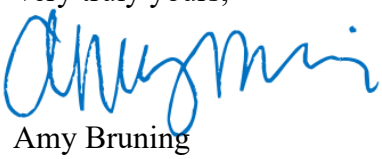
Further, the bill—just like its prior enactments and amendments to ORS 12.117 and 12.118—does not create a new or enlarge an existing cause of action. A plaintiff would still have the burden of proving that the institution "allowed, permitted, or encouraged"[8] child sex abuse or sexual assault in order to be within the extended statute of limitations in addition to proving that the institution acted negligently.

Likewise, opponents' stated concerns of supposed "stale evidence" only goes to the difficulty the survivor will have in bringing her claim. The burden of proof lies with the plaintiff and the rules of evidence are oriented toward excluding unreliable evidence. The older or weaker the evidence, the higher likelihood such claims will fail.[9] Shielding perpetrators and enablers of sexual abuse through restrictive statutes of limitations on the basis of hypothetical concerns that our court system already handles is simply not justified.

Finally, I believe profoundly in our civil justice system as an imperfect means of providing survivors an opportunity to regain control and assert autonomy over their recovery. In a criminal case, the prosecutor and not the victim controls the case. But as civil plaintiffs, survivors determine whether to initiate or dismiss a suit and they should also get to fully determine when the time is right to do so. Additionally, the goal of tort law is to make the plaintiff whole, while having the ancillary benefit of deterring wrongful conduct by the defendant.[10] Passing HB 3582 A would further both purposes by ensuring that perpetrators of abuse and the institutions that harbor them can *both* be held accountable whenever the survivor is ready.

Thank you for your time and for your consideration of HB 3582 A.

Very truly yours,



Amy Bruning

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[8] *See, e.g., Schmidt v. Mt. Angel Abbey*, 347 Or 389, 405-08, 223 P3d 399, 408-09 (2009) (discussing in part meaning of "allowing, permitting, encouraging" without a "knowingly" or similar modifier in the context of a child sexual exploitation claim under ORS 12.117.); *Wyers v. Am. Med. Resp. Nw., Inc.*, 360 Or 211, 222, 377 P3d 570 (2016) (discussing meaning of "permit" in the context of an abuse of a vulnerable person claim).

[9] *See* Mihailis E. Diamantis, *Limiting Identity in Criminal Law*, 60 B.C. L. Rev. 2011, 2059 (2019) (citing the burden of proof and other applicable rules in support of the conclusion that "the general effect of time on evidence is to increase the risk of letting the guilty go free").

[10] An important benefit to society in extending statutes of limitations is the identification of the perpetrators of sexual assault. Samantha S. Rose, *Vindication for Victims: A Proposal to Eliminate the Civil Statute of Limitations for Minor Sexual Abuse Claims in Iowa*, 108 Iowa L. Rev. 957, 972 (2023). Many researchers believe recidivism rates of sex offenders are underestimated because so many sexual abuse crimes go unreported. Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, U.S. Dep't of Justice, Office of Sex Offender, Sentencing, Monitoring, Apprehending, Registering, and Tracking (July 2015), available at https://smart.ojp.gov/somapi/chapter-5-adult-sex-offender-recidivism.